Supreme Court, U.S.
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No. 00-1054

In the Supreme Court of the United States

TOMMY RANDELL,
Petitioner,

v.

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION; MELINDA BOZARTH, DIRECTOR, TEXAS BOARD OF PARDONS AND PAROLES; JOHN DOE, I; JOHN DOE, II,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Should limitations or exceptions to *Heck v. Humphrey*'s "favorable-termination" prerequisite for §1983 suits be considered in a case in which the plaintiff has not alleged that it was somehow impossible for him to satisfy *Heck*'s requirement, where there is only the barest of factual allegations, and where the issue has not been developed or fully litigated in the courts below?

TABLE OF CONTENTS

Question Presented for Review i

Table of Contents iii

Index of Authorities iv

Statement of the Case 2

Reasons for Denying the Writ 5

I. This Case Does Not Present the *Heck* Issue Posed by Petitioner and It Is an Inadequate Vehicle for Reviewing That Issue. 5

II. There Is No Confusion in the Lower Courts Requiring the Court's Intervention. 9

Conclusion 14

INDEX OF AUTHORITIES

CASES

Berkovitz v. United States, 486 U.S. 531 (1988) 2

Board of Pardons & Paroles v. Court of App. for the Eighth Dist., 910 S.W.2d 481 (Tex. Crim. App. 1995) 3

Cabrera v. City of Huntington Park, 159 F.3d 374 (CA9 1998) 11

Carr v. O'Leary, 167 F.3d 1124 (CA7 1999) 10

DeWalt v. Carter, 224 F.3d 607 (CA7 2000) 12

Edwards v. Balisok, 520 U.S. 641 (1997) 13

Figueroa v. Rivera, 147 F.3d 77 (CA1 1998) 11

Green v. Montgomery, 219 F.3d 52 (CA2 2000) 11

Harvey v. Waldron, 210 F.3d 1008 (CA9 2000) 12

Heck v. Humphrey, 512 U.S. 477 (1994) ..... *passim*

Hoard v. Reddy, 175 F.3d 531 (CA7 1999) 7, 9

Huey v. Stine, 230 F.3d 226 (CA 6 2000) 12

Jenkins v. Haubert, 179 F.3d 19 (CA2 1999) 12

Kim v. Hurston, 182 F.3d 113 (CA2 1999) 13

Leather v. Eyck, 180 F.3d 420 (CA2 1999) 10, 11

Nashville, C. & St. L.R. Co. v. Wallace,
288 U.S. 249 (1935) 8

Shamaeizadeh v. Cunigan, 182 F.3d 391 (CA6 1999) 12

Spencer v. Kemna, 523 U.S. 1 (1998) ..... *passim*

STATUTES

28 U.S.C. §1915A 4, 8

28 U.S.C. §1915(e)(2)(B) 8

42 U.S.C. §1983 ..... *passim*

TEX. GOV'T CODE §508.251 3

TEX. GOV'T CODE §508.252 3

TEX. GOV'T CODE §508.254 3

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RESPONDENTS' BRIEF IN OPPOSITION

Petitioner has not identified any legitimate reason for the Court to revisit its holding in *Heck v. Humphrey*.[1] He has not presented a significant division in the lower courts regarding the proper scope of *Heck*'s "favorable-termination" prerequisite for §1983 suits. He has also failed to allege that it was somehow impossible for him to satisfy that requirement, which would be the only legitimate way to raise the possibility of a limitation on *Heck*'s application. Lastly, this case lacks the necessary factual and issue development to permit meaningful consideration of modification of

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1. 512 U.S. 477 (1994).

the *Heck* rule. All these reasons render this case an inappropriate candidate for the Court's review.

STATEMENT OF THE CASE

Randell's *in forma pauperis* complaint was dismissed *sua sponte* as frivolous, so all of the factual allegations in Randell's complaint must be accepted as true.[2] Those brief allegations, in their entirety, follow:

> On 9-7-96 while incarcerated in Plainview, TX, for DWI, no bond was available as T.D.C.J. [Texas Department of Criminal Justice] Board of Pardons and Paroles had placed a blue warrant detainer on me preventing me from making any bond and I was not given or granted liberty of freedom in any way, and thus, from 9-27-96 to 6-26-97, I was not credited for all this time I served on this sentence under a detainer and at later time(s) I've had to serve all over again. I have fully served my five year sentence, but still to this day I have never received <u>any credit</u> for this <u>flat time</u> served under this detainer from 9-27-96 to 6-26-97. This time was served under my 655140 T.D.C.J. number. (Complaint ¶V) (emphasis in original).

Randell also states that Respondent Johnson, Director of TDCJ-Institutional Division, is "responsible for the detention past the correct sentence of (5) five years," and that Respondent Bozarth, Director of the Texas Board of Pardons and Paroles, is "responsible for the proper discharge and calculation of time on sentence." (Complaint ¶IV.B).

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2. *Berkovitz v. United States*, 486 U.S. 531, 540 (1988).

Randell appears to allege that at some time before he was arrested for driving while intoxicated, he was sentenced to five years in TDCJ for an unidentified crime and was paroled before serving the complete five-year sentence. Following his DWI arrest, Randell spent the nine months in the Plainview, Texas jail. While he does not explain if these nine months were a sentence for the DWI offense, he claims that he could not make bond on the DWI arrest because TDCJ issued a "blue warrant" on him, which is a prerevocation warrant issued for the arrest of a person suspected of violating his or her parole.[3] After being released from the Plainview jail, he went back to TDCJ one or more times on the pre-existing five-year sentence, presumably due to parole violation, eventually serving the entire five-year sentence in TDCJ. (Complaint ¶V).

Randell contends that because a blue warrant was issued, the nine months in the Plainview jail on the DWI charge should also count as part of his five-year sentence for the unspecified prior crime, and sought solely "compensatory damages of $1,000 [for] each day I served over my sentence." (Complaint ¶V).

Randell does not suggest that he sought habeas relief when TDCJ failed to release him at the allegedly appropriate time. The first challenge to the allegedly unconstitutional additional nine months of confinement appears to be this §1983 lawsuit. When he filed this case, he had completed his five-year sentence but was back in TDCJ on a new sentence. (Complaint ¶V).

Following the Prison Litigation Reform Act's screening requirement, 28 U.S.C. §1915A, the district court *sua sponte*

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3. *See, e.g., Board of Pardons & Paroles v. Court of App. for the Eighth Dist.*, 910 S.W.2d 481, 482 (Tex. Crim. App. 1995); *see also* TEX. GOV'T CODE §§508.251(a), 508.252(2) & (3), 508.254.

dismissed Randell's complaint, citing *Heck v. Humphrey*[4] and its requirement that §1983 plaintiffs seeking monetary damages for an allegedly unconstitutional conviction or term of confinement first obtain a "favorable termination" of that sentence or conviction.[5]

On appeal, the Fifth Circuit affirmed the district court's dismissal on the ground that *Heck* bars petitioner's §1983 claim, citing the following portion of that decision:

> We hold that, in order to recover damages for [an] allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. 2254.[6]

The Fifth Circuit observed that some courts, based on dicta from concurring and dissenting opinions in *Spencer v. Kemna*,[7] have speculated that, if presented the question, the Court would relax *Heck*'s universal favorable-termination requirement for §1983 plaintiffs with no procedural vehicle to challenge a conviction or

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4. 512 U.S. 477 (1994).
5. App. 7a (citing *Heck*, 512 U.S., at 486-87).
6. App. 3a (citing *Heck*, 512 U.S., at 486-87).
7. 523 U.S. 1, 17 (1998) (deciding, *inter alia*, that a prisoner's release mooted habeas challenge to parole revocation despite potential utility of successful habeas challenge in satisfying *Heck*'s "favorable-termination" requirement).

sentence.[8] The Fifth Circuit went on to state that even if *Heck* were to be relaxed for plaintiffs lacking a procedural vehicle to challenge a conviction or sentence, Randell had failed to allege that he had no available procedural vehicle, but rather complained only of an inability to obtain habeas relief.[9]

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT PRESENT THE *HECK* ISSUE POSED BY PETITIONER AND IT IS AN INADEQUATE VEHICLE FOR REVIEWING THAT ISSUE.

Petitioner urges the Court to grant the petition in order to review the question whether convicted persons who have no effective habeas remedy or other vehicle to reverse or call into question a conviction or sentence may challenge their convictions or sentences under §1983, or whether such challenges are impermissible collateral attacks. But this case simply does not raise that question, because Randell did not allege that he could not comply with the requirement because he lacked any other avenue to correct the alleged error in his TDCJ sentence.[10]

In *Spencer v. Kemna*, Justice Souter's concurring opinion revisited *Heck*'s holding and expressed concern that application of

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8. App. 3a & n.4.

9. App. 3a.

10. *See Heck*, 512 U.S., at 486-87 (holding that for a §1983 claim premised on invalid conviction or sentence, plaintiff must "prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination or called into question by a federal court's issuance of a writ of habeas corpus" in order for action to be cognizable).

the favorable-termination requirement could make a §1983 claim unavailable to a convict not in custody simply because of that status.[11] The concurrence, together with the concurrence in *Heck* itself, listed potential scenarios where *Heck*'s requirement might render a plaintiff otherwise eligible for §1983 relief ineligible due simply to not being in custody at the time of suit, *e.g.*, where there is no imprisonment, but only a fine; where there is a short term of imprisonment or parole; where a plaintiff, through no fault of his own discovers a constitutional violation after the sentence has been served; and finally, where the favorable termination requirement would be impossible to satisfy as a matter of law.[12]

Randell does not allege that he sought habeas relief while incarcerated, nor does he address a reason for that failure. He does not allege that through no fault of his own, he discovered a constitutional violation only after the expiration of his sentence; to the contrary, he states he was denied bond at the Plainview jail because of TDCJ's prerevocation warrant. *See* Pet. 2. Randell does not suggest that he attempted to correct the alleged error in his term of confinement through notice to TDCJ via the prison grievance system. Instead of answering the question whether he used the prison grievance system on the standard inmate §1983 lawsuit form used to file this case, Randell crossed out the alternative choices of "yes" and "no" and wrote "not applicable." (Complaint ¶III). Furthermore, he did not allege that he had no other avenues by which to call into question or correct his length of confinement. In sum, Randell did not allege that he was "bound to a favorable-

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11. 523 U.S., at 20-21 & n.* (Souter, J., concurring).

12. *Id.*, at 21 & n.* (Souter, J., concurring); *Heck*, 512 U.S., at 500 (Souter, J., concurring); *see also Spencer*, 523 U.S., at 21 (Ginsberg, J., concurring).

termination requirement that it would be impossible as a matter of law for him to satisfy."[13]

Given the utter absence of allegations that petitioner tried any routes to correct the alleged error, this is clearly not the kind of case that was imagined as a cause for concern in the *Heck* and *Spencer* concurrences heralded by petitioner.[14] Randell was not fined or sentenced to a short term, he did not contend that he lacked a way to satisfy *Heck*'s "favorable termination" requirement, and he has not suggested that he discovered the sentence error only after his release.[15] Randell does not present a case that even warrants exploring the possible circumstances and conditions in which there might be an exception to *Heck*'s prerequisite. As such, petitioner's case could not be a more poorly suited vehicle for consideration of the issue.

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13. *Spencer*, 523 U.S., at 21 (Souter, J., concurring). *See also* App. 3a (noting Randell's failure to do so).

14. *See Spencer*, 523 U.S., at 20-21 & n.* (Souter, J., concurring); *Heck*, 512 U.S., at 500 (Souter, J., concurring); *see also* App. 3a (noting that courts observing that if the question were presented, the Court "would relax *Heck*'s universal favorable termination requirement [only] for plaintiffs *who have no procedural vehicle*") (emphasis added); *Hoard v. Reddy*, 175 F.3d 531, 533 (CA7 1999) (noting that "there is probably an exception to the rule of *Heck* for cases in which *no route* other than a damages action under section 1983 is open to the person to challenge his conviction") (emphasis added).

15. *Heck*, 512 U.S., at 500 (Souter, J., concurring) (expressing concern about such potential circumstances in application of *Heck*); *see also Spencer*, 523 U.S., at 21 (Souter, J., concurring) (suggesting that a §1983 plaintiff not in custody could pursue a claim "without being bound to satisfy a favorable-termination requirement that it would be *impossible* as a matter of law for him to satisfy") (emphasis added).

In addition to the fact that this case does not truly raise the issue identified by petitioner, it is also an inappropriate candidate for the Court's review because it has not been fully litigated. The district court *sua sponte* dismissed the complaint in accordance with its obligation to review prisoner complaints at the earliest possible stage and dismiss those that are frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from an immune defendant. *See* 28 U.S.C. §§1915A, 1915(e)(2)(B). The Fifth Circuit briefing involved only petitioner's single, *pro se* brief. The record before this Court includes only that brief together with petitioner's complaint (excerpted in full), filing fee documents and rulings, and the two court orders included in petitioner's appendix.

This case lacks the necessary concrete context in which to review the issue. Without any basic factual allegations, the Court could hardly even begin to consider the issue of lifting *Heck*'s bar in certain circumstances. In addition, there was apparently no prison grievance filed, which would have either resolved petitioner's complaint or contributed some record of dates, sentencing, time served, and TDCJ's position. And the critical fact of whether Randell's nine-month stay in the Plainview jail was part of his DWI sentence or due to the prerevocation warrant remains unclear. Delineating particular parameters for *Heck*'s rule would be a highly fact-bound decision implicating incentives and policy concerns in the areas of §1983 and habeas litigation that the Court could not account for in its consideration of the issue because of the absence of any issue or factual development in this case.[16]

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16. Review of petitioner's proposed issue in the context of this case would border on "advising what the law would be on an uncertain or hypothetical state of facts." *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U.S. 249, 261 (1935).

II. THERE IS NO CONFUSION IN THE LOWER COURTS REQUIRING THE COURT'S INTERVENTION.

Despite agreement among the First, Fourth, Fifth, and Sixth Circuits that *dicta* in *Spencer*'s concurring opinions did not create a limitation or exception to *Heck*,[17] Randell alleges a division among the circuit courts regarding the scope of *Heck*'s "favorable-termination" requirement for §1983 suits. An examination of the cases, however, reveals that with only slight exception, they present straightforward applications of *Heck*'s requirement and uncontroversial §1983 suits that admittedly fall outside the scope of *Heck*'s requirement. Petitioner does not demonstrate a level of "confusion" warranting the Court's review.

The division outlined by petitioner is shallow at best. He cites decisions from the Second Circuit and Seventh Circuit that he claims reflect confusion by the courts when confronted with §1983 plaintiffs who are no longer in custody. *See* Pet. 11-13. With regard to the Seventh Circuit, however, petitioner admits that it "has not yet had occasion to issue a square holding on this issue," and instead points only to "indicat[ions]" that the Seventh Circuit agrees with the concurring opinions of Justice Souter in *Heck* and *Spencer*. Pet. 13. Indeed, in *Hoard v. Reddy*,[18] a decision cited by petitioner in furtherance of a "split," the Seventh Circuit held the plaintiff to *Heck*'s requirement in a §1983 lawsuit seeking damages for an access-to-courts violation based on hindering the prisoner's ability to litigate a state habeas action, noting that the plaintiff "had no basis for complaining that no route was open to him other than this damages action."[19]

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17. *See* Pet. 13-14.

18. 175 F.3d 531, 533 (CA7 1999).

19. Petitioner's other Seventh Circuit decision addressing *Heck* and *Spencer* did not even reach an application of *Heck*. *See* Pet. 13

Thus, it appears that it is only the Second Circuit that has permitted an exception to *Heck*'s bar, while the other circuits have stayed the course. And the Second Circuit's deviation is hardly an impetus for the Court's review of the urged issue. That court's limitation on *Heck*'s rule does not have its origins in the concerns expressed in the *Heck* and *Spencer* concurrences. Instead, it was a quickly adopted extension by faulty reasoning from the situation of "conditions-of-confinement" cases for which there is no habeas remedy, although §1983 actions are permitted. In *Leather v. Eyck*,[20] a case in which the plaintiff was not imprisoned but fined with a suspended license, the Second Circuit relied on the unavailability of habeas relief in "conditions-of-confinement" cases to conclude that because *Heck* clearly does not apply to such cases—because they do not challenge the validity of convictions or sentences—then *Heck* must not apply to *any* situation in which habeas relief is unavailable. In reaching this conclusion, the Second Circuit failed to explore or even acknowledge the logic behind the two different circumstances, and instead wholesale imported the inapplicability of *Heck* in "conditions-of-confinement" cases into the context of §1983 cases, which do involve challenges to the validity of sentences or convictions. The Second Circuit did not justify curbing *Heck* because its rule would otherwise command some unjust or anomalous result—the only concern which has been hypothesized—and did not consider the effect of other possible avenues of challenge.[21]

(citing *Carr v. O'Leary*, 167 F.3d 1124, 1127 (CA7 1999) (holding that defendants waived their *Heck* defense to due-process challenge to prison disciplinary proceeding regarding good-time credits)).

20. 180 F.3d 420, 424 (CA2 1999).

21. *See id.*, at 424; *see also id.*, at 422 (noting that plaintiff did not appeal conviction).

In petitioner's only other Second Circuit decision implicating *Heck*'s rule, *Green v. Montgomery*,[22] the court merely cited and restated its *Leather* holding in a footnote,[23] and certified questions regarding issue preclusion to the New York Court of Appeals.[24] Neither Second Circuit decision explores the parameters of *Heck*, and *Green* ironically complies with the spirit of *Heck*'s rule by directing an initial adjudication of the dispositive §1983 issues by the state court, the very informing purpose of *Heck*'s rule.[25]

Armed with only the Second Circuit's two idiosyncratic decisions, petitioner faces the phalanx of decisions applying the *Heck* rule without pause. In *Figueroa v. Rivera*,[26] the First Circuit performed a matter-of-fact application of *Heck* when a prisoner brought a habeas challenge to his conviction, but later died, mooting the action. His heirs then tried to assert the same claims through a §1983 suit, an effort rejected on the ground that the conviction could not be collaterally attacked via a §1983 suit.[27] The court noted that a separate deliberate indifference claim was not subject to *Heck*'s requisite favorable termination.[28] In a variation on a theme, the Ninth Circuit considered in *Cabrera v. City of Huntington Park*[29] the interplay of the accrual of §1983 causes of action for statutes of limitations purposes with the reasoning in *Heck* regarding when §1983 claims become cognizable.[30] The

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22. 219 F.3d 52 (CA2 2000).
23. *Id.*, at 60 n.3.
24. *Id.*, at 61.
25. 512 U.S., at 497-98 & n.4.
26. 147 F.3d 77 (CA1 1998).
27. *Id.*, at 81-82.
28. *Id.*, at 82.
29. 159 F.3d 374, 380-81 (CA9 1998).
30. The Ninth Circuit conducted a similar analysis in *Harvey v. Waldron*, 210 F.3d 1008, 1014-16 (CA9 2000). *See also Shamaeizadeh*

decision built on *Heck*'s foundation, and did so seemingly with ease. The appropriateness of *Heck*'s bar was not at issue in the case because the plaintiff did achieve a prior reversal of his conviction, and other claims did not call into question any conviction or sentence.

In an effort to conjure a circuit split, petitioner also reviews a series of decisions which fail to even implicate *Heck*'s "favorable-termination" prerequisite. Randell cites *Jenkins v. Haubert*[31] to illustrate the Second Circuit's purported adherence to the disinclination in Justice Souter's concurrences to preclude a §1983 claim simply because of the status of being out of custody. In that decision, however, the Second Circuit acknowledged that the case did not even implicate *Heck*'s requirement because the Court "has never announced that the *Heck* rule bars a challenge under §1983 to an administrative or disciplinary sanction that does not affect the overall length or conviction."[32] Likewise, in *DeWalt v. Carter*, another decision cited by petitioner, the Seventh Circuit recognized that *Heck* does not come into play in a §1983 suit alleging a due-process violation at a prison disciplinary hearing which results in a change of conditions of confinement, because the fact or duration of confinement is not under challenge.[33] In *Kim v. Hurston*,[34] the Second Circuit merely noted once again that *Heck* is not implicated

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v. Cunigan, 182 F.3d 391, 396-97 (CA6 1999) (considering same issue and reaching same conclusion). *See also* Pet. 14 (acknowledging that cited observation by Sixth Circuit in *Shamaeizadeh* regarding Court's view of scope of *Heck* is "dictum" and that Sixth Circuit has explicitly held that *Spencer* made no inroads on *Heck*'s rule in *Huey v. Stine*, 230 F.3d 226, 230 (CA6 2000).

31. 179 F.3d 19 (CA2 1999).
32. *Id.*, at 27.
33. 224 F.3d 607, 616-18 (CA7 2000).
34. 182 F.3d 113, 118 n.3 (CA2 1999).

in a §1983 lawsuit complaining of conditions of confinement if the prisoner is not challenging the validity of the term of confinement.

These decisions do not reflect any division among the courts, as *Heck* itself explains that its requirement is triggered when a §1983 damages claim "necessarily demonstrates the invalidity of the conviction [or sentence],"[35] because only then could the claimant be said to be "attacking the fact or length of confinement."[36] Any division in the circuit courts is shallow at best and remains undeveloped.

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35. 512 U.S., at 481-82.

36. *Id.*, at 482 (quotation, citation and ellipsis omitted). *See also id.*, at 487 ("[w]hen a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; *if* it would, the complaint must be dismissed *unless* the plaintiff can demonstrate that the conviction or sentence has already been invalidated.") (emphasis added); *id.*, at 487 n.7 (stating that a §1983 suit for allegedly unreasonable search may proceed without regard to "favorable termination" because such an action "would not necessarily imply that the plaintiff's conviction was unlawful"); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (holding §1983 claim not cognizable under *Heck* because challenge to procedures used in revocation of good-time credits amounted to challenge to sentence and plaintiff had not satisfied *Heck*'s requirement).

CONCLUSION

For these reasons, the Court should deny the petition.

Respectfully submitted,

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